IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4653 OF 2005

Gurupad Ishwar Hampannawar, .. Applicant
Vs
1. Umesh Chandrakant Mhapankar
and anr. .. Respondents.

Mr Ashwin Shety, for the appliczant.
Mr A.S.Shitole, APP for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 10th JULY, 2006

P.C.:

1. Heard the learned counsel for applicant and the learned APP for the respondent-State.

2. This is an application under section 378(4) of Cr.P.C seeking leave to file appeal against the judgment of acquittal of the offence punishable under section 138 of the Negotiable Instruments Act. The respondent-accused had allegedly issued a cheque of Rs.22,500/- which was dishonoured for want of sufficient fund. It appears that in the course of trial it was found that there were material alterations in the cheque and on that ground the learned Judge acquitted the accused. The relevant observations in paragraph 7 of the judgment reads thus:

> "On perusal of cheque vide Exhibit 18 it reveals that there is erasure in the original

> date on the cheque and after carrying out erasure the date is changed as 12 and also there is erasure in respect of figure of year and it appears that year is changed by making alteration. Further, it reveals that original printed contents relating to Bank-Name on the cheque also found missing due to carrying out erasure on the cheque. Most interesting thing which is to be noted here that there is difference in the ink used for writing date on the cheque and the contents as to figure of the amount, figure in words and signature on the said cheque. Therefore, it appears that the date on the cheque was previously written and subsequently it was changed. Complainant in his cross-examination has denied that there is erasure in cheque Exh.18. It appears that complainant is intentionally denying the same. On the contrary, C.W.2 Bank Manager has admitted that there is a erasure in respect of the date on the cheque in question. It is material to note that complainant in his cross-examination has admitted that when the cheque was given to him by the accused, there was no any type of erasure. C.W.2 has admitted that no any bank employee is required to make any erasure on the cheque. All these circumstances clearly show that after giving the cheque by accused to complainant, subsequently alteration was made in the cheque. Thus, I find substance in the defence theory that complainant has carried out alteration in respect of date on the cheque. This fact creates doubt about the original date on the cheque in question."

Mr Shete, learned counsel for the applicant, submitted that presumption under section 139 has not been rebutted by the accused and that is significant in view of the fact that the cheque was returned by the Bank for want of sufficient fund and not on the ground of alterations. In view of the aforesaid findings recorded in paragraph 7, in my opinion, the submission of the learned counsel for the applicant falls flat on the ground and cannot be sustained. It was the choice

of the Bank to mention the ground for return of the cheque and merely because there was no reference to the alteration in the return Memo, does not mean that presumption was in favour of the complainant. The fact remains that there were alterations and they were of material nature rendering the cheque void. I find no fault in the order of acquittal. Hence, the application seeking leave to appeal is rejected.

(D.B.BHOSALE,J.)